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## UNIT 23 CONSTITUTIONAL DEVELOPMENTS (1757-1858)

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### 23.0 OBJECTIVES

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After reading this Unit you will :

- become familiar with the important constitutional developments in the first century of British rule
- trace the transition from Company's rule to rule by the Crown
- acquaint yourself with the stages in the evolution of the structure of Government, and
- bring out the link between the constitutional changes and the economic and political interests behind them.

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### 23.1 INTRODUCTION

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The English East India Company was essentially a commercial body. Following the principles of mercantilism and to ensure monopolistic profit the company needed political power hence political activities which resulted in acquiring revenue-yielding territories. After 1757 it was in a privileged position of yielding political power over a large section of the population of India.

The authority which controlled the Company was situated far away from India in Britain. The British Government faced many problems from this situation and relationship. The Company had become a great empire combining the role of trader and an overlord. It was now clear that the power and sovereignty of the Indian empire was vested in the Company. The British Government decided that it could no longer be allowed to remain outside the ambit of the state. Even Clive and Hastings had held that constitutional relations with the Crown might be desirable.

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### 23.2 BACKGROUND

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Establishing the sovereignty of the Crown in place of the Company was yet too bold a step to be taken. That would have directly put an enormous mass of patronage in the hands of the government. Again it would have caused much bitterness in India and among European nations. The wise step was to subject the Company to control on the basis of current doctrines of constitutional law.

A select committee of Parliament was appointed in April, 1772 to enquire into the state of affairs in India. In August the Company begged the Government for a loan

of £ 1,00,000. It was surprising that although the servants of the Company collected wealth, the Company faced serious financial crisis.

The problem before the British Government was to define the relationship of East India Company and its possessions with the British Government. Another problem was to determine the way the Company's authorities in Britain were to control the large number of officials and soldiers working for it in far away India. The question of providing a single centre of control over farspread British possessions in Bengal, Madras and Bombay was also causing great concern.

The form of the relationship of the East India Company and its possessions with the British Government was most important because it was closely connected with party and parliamentary rivalries in Britain. English statesmen were politically ambitious and English merchants were commercially greedy. Bengal had yielded rich resources into the hands of the Company. Fabulous wealth brought home by its officials caused jealousy in the British nation. Merchants, the growing section of manufacturers and newly risen 'free enterprisers' were striving to have a share in the profits of Indian trade and wealth coming from India. Why should East India Company alone enjoy this? They wanted to put an end to the monopoly of trade held by the Company. With this end, they criticised the way the Company administered Bengal.

Many political thinkers and statesmen of Britain were afraid that the Company and its powerful rich officials would lower the standard of morality of the English nation and increase corruption in British politics. The seats in the House of Commons were bought by the Company for its agents. It was feared that the Company, with the help of money brought from India, might achieve dangerous supremacy in the British Government.

A new School of economists who were advocating free trade condemned exclusive companies. Adam Smith in his book, 'Wealth of Nations' wrote that exclusive companies were causing harm both to countries which establish them and the countries that they govern.

The East India Company's position was unique at home. King George-III patronised it. It fought with the help of its friends in Parliament. The Parliament decided on a compromise. A balance was worked out. The British decided to control the Company's Indian administration in the interest of Britain's influential elite class as a whole. The Company was allowed to continue with its monopoly of Eastern trade. The Directors of the Company were given the control of Indian administration.

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### 23.3 THE REGULATING ACT, 1773

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In these circumstances, the Parliament passed its first important Act in 1773, called the Regulating Act to control the Company's Administration. The Act made changes in the constitution of the Company at home; the whole of the territories in India were subjected to some degree of control.

The provision was made in a very efficient manner for the government to keep supervision over the Company. Changes were made in the Constitution of the Court of Directors of the Company. It was required that it should submit to the Government all communications about civil and military affairs received from Bengal and revenues of India.

In the field of executive government, the status of Governor of Bengal was raised to Governor General. His Council would consist of four members. The Governor General in Council was given the power to superintend and control the presidencies of Madras and Bombay in matters of war and peace. In this body was vested the civil and military administration of the presidency, and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar and Orissa.

The Governors of Madras and Bombay were required to send regularly, to the Governor General, information connected with government, revenues, or interests of the Company. The Governor General in turn was under the direct control of Court of Directors and kept it fully informed of the affairs concerning the interests of the Company.

The Act also provided for the establishment of a Supreme Court of Justice at Calcutta to give justice to Europeans, their employees and citizens of Calcutta.

Legislative powers were granted to the Governor General and Council to make rules, ordinances and regulations for the civil government of Fort William and subordinate factories.

The Regulating Act did not work smoothly in practice. Its defects and weaknesses were exposed when it was put to working. Supervision of the British government was ineffective. The Governor General had to face the opposition of his council, who united against him. He had no power to override them, though in case of an equal division he had a casting vote. Disunity of the Council prevented it from solving external and internal problems of a serious nature. They had to often face deadlocks which impeded smooth working of the administration. The President of Madras and Bombay were under the general controlling power of the Governor General and Council proved inefficient in actual working.

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## 23.4 PITT'S INDIA ACT, 1784

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**Pitt's India Act** was passed in August, 1784. The purpose was to remove defects in the Regulating Act. Its essential plan was the same. Company's public affairs and its administration in India were to come directly under supreme control of the British Government. The right of the Company to territorial possessions was however not touched, so it essentially meant a compromise.

The Act established a Board of Control consisting of six commissioners, including two Cabinet ministers. The Board of Control was to guide and control the work of the Court of Directors and the Government of India. They were to control all matters of civil and military Government of the British territories in India. A secret committee consisting of three Directors was appointed to take the place of the Court of Directors in political and military matters.

The Constitution of the Company's government in India was revised. The Act established the principle that the government of India be placed under the Governor General and a Council of three, so that if only one member of the Council supported him, he could have his way. The Governor General was given a casting vote. The Act clearly stated that the Presidencies of Madras and Bombay were to be subordinate to the Presidency of Bengal in all matters of war, diplomatic relations and revenue.

The Governor General and council were made subordinate to British Government. They were forbidden to declare war and enter into any treaty without the sanction of the directors or the secret committee.

Pitt's India Act is important in many aspects. The President and the board were destined to be the future Secretary of State for India and his council. It helped in uniting India by giving supreme power to Governor General over the Governors of Presidencies.

By reducing one member of the Executive Council of the Governor General his position was strengthened. The Governor General and Governors were given the authority to override their councils. The possessions of the Company in India came under the supremacy of the British Parliament.

The Act laid the foundation of a centralised administration—a process which reached its climax towards the close of the nineteenth century. Parliament's control over East India Company was tightened, a trend which remained conspicuous till the Crown directly took over the Government of India in 1858.

The Act had many defects too. It had divided authority and responsibility. The Governor General had two masters, the Court of Directors and the Board of Control. Out of this conflict of authority emerged the view of the primacy of the man on the spot. Cornwallis accordingly stretched his authority to the widest possible limit. The actual state of affairs were not known to the Home Government. This gave Governor General an opportunity to act in his discretion even on matters of importance.

The Government of India was to be carried on till 1857 according to the framework given in the Pitt's India Act. Cornwallis, when appointed Governor General, insisted on having the power to override his council in important matters such as safety, peace and interests of the Crown in India. The Act of 1786 gave him the powers he asked for. The offices of the Governor General and the Commander-in-Chief were to be united in the same person.

Declaratory Act of 1788 gave full powers and supremacy to the Board of control. This was a step towards transfer of powers of the Company to the Crown.

**Check Your Progress 1**

- 1) Why did the British Government decide that the affairs of the East India Company should no longer remain outside their control?

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- 2) Which weaknesses of the Regulating Act were removed by the Pitt's India Act? Answer in five lines.

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**23.5 CHARTER ACT OF 1793**

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The Charter was to be renewed in 1793. Henry Dundas, President of the Board of Control, was in favour of renewing the Charter and allowing the Company to retain its political privileges and responsibilities. Cornwallis also supported this stand. The Charter of the Company was renewed for 20 years and it was declared that it would be allowed to continue with the possession of all territories for the next 20 years.

The Governor General's and Governors' powers to overrule their council were emphasised and explained. This power had been given specially to Cornwallis in 1786. Governor General's control over the Presidencies was strengthened. He was allowed to issue orders and directions to any Government and Presidency of India during his absence from Bengal without previous consultation with his council. He could exercise all executive power vested in the Central Government.

A regular code of all regulations that could be enacted for the internal Government of the British territory in Bengal was framed. The Regulation applied to the rights, persons and property of the Indian people and it bound the Courts to regulate their decisions by the rules and regulations contained therein. It also required that, "all laws relating to the rights of the person and property should be printed with translation in Indian languages and prefixed with statements of grounds on which they were enacted, "so that the people should become familiar with their rights, privileges and immunities.

The Act of 1793 thus laid the foundation of government by written laws and regulations in British India in place of the personal rule of the past rulers. The interpretation of regulations and written laws was to be done by the Courts. The concepts of a civil law, enacted by a secular human agency and applied universally, was an important change.

Indians were not given positions where they could share the influence or authority. Indians were excluded "to satisfy the demand of English men for lucrative jobs."

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### 23.6 CHARTER ACT OF 1813

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Enquiries into the Company's affairs were ordered before another renewal of the Charter due in 1813. In 1808, the House of Commons appointed a Committee of investigations. Its report on judicial and police arrangements was submitted in 1812. The government decided to allow British subjects access to India with their ships.

The Home Government had specifically directed the Government of India not to follow the policy of conquests. But aggressive policies in India resulted in acquisition of territory. Lord Wellesley and Marquis of Hastings followed an imperialistic policy. The Company's power had spread to the whole of India except Punjab, Nepal and Sind. Company requested for financial help from the Parliament due to overspending in wars and setback in trade. There was also a lot of agitation against continuance of commercial monopoly by the East India Company. Independent merchants demanded ending of the same. They wanted a share in the trade with India. The teachings of Adam Smith and his school were by then dominating the politics of Britain. Benthamite Reformists, the Evangelicals and the Traditionalists tried to influence British politics and policies towards British India. Their foremost interest was to safeguard the stability of the Empire.

The Act of 1813 renewed the Company's Charter for 20 years, but it asserted the sovereignty of the British Crown over the Indian territories held by the Company. Company was allowed to have territorial possessions for another 20 years.

The Company was deprived of its monopoly of trade with India. It was allowed to continue with its monopoly of trade with China for 20 years. The Indian trade was thrown open to all British merchants.

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### 23.7 CHARTER ACT OF 1833

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The Industrial Revolution had made Britain a manufacturer of cotton textiles and other factory goods. A vast country like India could consume a large number of manufactured goods and provide raw materials as well. Industrialists were keen to conquer the vast Indian markets. The East India Company served the ends of British imperialism. Their restrictive policies had led to the ruin of indigenous industries. **Laissez Faire** had become the basic philosophy of the new industrial policy in Britain. There was a popular desire to free trade from restrictions and monopolies.

When it was time for the renewal of the Charter in 1833 there was widespread agitation for abolition of the Company and take over of administration by the Crown. A Parliamentary enquiry was held.

The political atmosphere in Britain was full of enthusiasm for reforms. The well known Reform Act was passed in 1832. The country was enjoying the prosperity achieved with the Industrial Revolution. It could afford to adhere to the policy of free trade. Slavery was abolished in the whole of the British empire.

The Act of 1833 was a great landmark in the constitutional history on India.

The monopoly of tea trade with China was abolished. The Company was to have only political functions. India was to pay the Company's debts. Its shareholders were guaranteed a dividend of 10.5 per cent per annum. The union of the trader and the sovereign was finally dissolved. The Indian possessions of the Company were to be held in trust for the British Crown. The President of the Board of Control became

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the minister for Indian affairs. The Directors were to act as expert advisors of the President of the Board of Control. The Board of Control was invested with authority to superintend, direct and control the affairs of the Company relating to the Government or revenues of the Indian territory which vested in the Company in trust for the English Crown.

Governor General of Bengal became the Governor General of India. The Governor General in Council was to control, superintend and direct the civil and military affairs of the Company. Bombay, Bengal, Madras and other regions were subjected to complete control of the Governor General in Council. Central Government was to have complete control over raising of revenues and expenditure. Expenses of Provincial Governments, creation of new offices, and obedience of all members of the Government of Bombay, Madras were under strict control of the Central Government.

By the Act of 1833, the Governor General in Council were given the power to legislate for the whole of the British territories in India. These laws were applicable to all persons, British or Indian foreigners or others and to the servants of the Company. They were enforceable by all courts in India.

The Act added one more member to the Executive council of the Governor General, the Law Member, whose work was fully legislative. He had no vote in the Council and he was to attend meetings on invitation. But he practically became a regular member of the council. Lord Macaulay, the Law member, influenced the educational policy of the government for a number of years.

The number of members of the Presidency Councils was reduced to two. Bombay and Madras were to keep their separate armies under the Commanders-in-Chief. They were to be under the control of the Central Government.

The Act provided for the codification of laws in India. There were several type of laws before 1833. There were the English Acts, Presidency Regulations, Hindu Law, Muslim Law, Customary Law etc. By this Act the Governor General was empowered to appoint the Law Commission to study, collect and codify various rules and regulations prevalent in India. The Indian Penal Code and Codes of Civil and Criminal Law were enacted by the efforts of Indian Law Commission.

Section 87 of the Act declared, "that no native or natural born subject of the crown resident in India should be by reason only of his religion, place of birth, descent, colour or any of them be disqualified for any place in the company's service." It was a momentous declaration. Lord Morley later described it as the most important India Act passed by the British Parliament till 1909. This was not of much practical importance, since nothing was done and Indians remained excluded from higher posts in civil and military service.

The Charter Act of 1833 made no provision to secure the nomination of Indians to the covenanted services of the company. Yet the clause proclaiming on discrimination was of great importance for it became the sheet-anchor of political agitation in India towards the end of the century.

**Check Your Progress 2**

- 1) Which important source of profit did the East India Company lose in 1833? Write in five lines.

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- 2) What were the main clauses of the Charter Act of 1793? Write in ten lines.

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## 23.8 CHARTER ACT OF 1853

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Politically conscious Indians made efforts to bring to an end the reactionary government of the East India Company. Raja Rammohan Roy went to Britain and represented India's case before the Parliamentary Select Committee. The Bombay Association and the Madras Native Association sent petitions on similar lines. But there was strong opposition to it from leaders of different parties, ministers, president of the Board of Control and Company's Directors. They favoured the renewal of the Charter.

By the Act of 1853, separation of the executive and the legislative functions was carried a step further by the provision of additional members of council for the purpose of legislation.

The Law Member was made a full member of the Executive Council of the Governor General. The consent of the Governor General was made necessary for all legislative proposals. In this framework the central legislature was completed. Central Legislative Council was to consist of one representative each from the Provinces. Measures concerning a province were to be considered in the presence of representatives from that province. The Chief Justice of Supreme Court of Calcutta was to be the ex-officio member of the Council. Two more civilians might be nominated by the Governor General, but this authority was never exercised.

The Council in its legislative capacity was to consist of 12 members. These included the Governor General, Commander-in-Chief, four members of his council and six legislative members.

All vacancies in India were to be filled in by competitive examinations. Lord Macaulay was appointed the President of the Committee.

The number of Directors was reduced from 24 to 18. Six of them were to be nominated by the Crown.

The Company was allowed to retain possessions of the Indian territories "in trust for Her Majesty, her heirs and successors until Parliament shall otherwise provide."

The "Legislative Councillors" were neatly distinguished from the "Executive Councillors" and by doing so, legislation was for the first time treated as a special function of the government requiring special machinery and special procedure. The business of the Council was conducted in public. The procedure it adopted for transaction of business was much the same as in the British Parliament. Questions were put, papers were demanded and information was asked for and Government was criticised for its lapses and excesses.

Certain misgivings were raised in the minds of Home authorities lest a representative system might not pave its way into the fortress of their autocratic machinery. The authorities in Britain felt when the Council which consisted of British officials only, showed boldness and inquisitiveness and pried into the field of the Executive. Its petitions for redress of grievances were presented as defiance of the parental authority of the Home Government and public rejection of certain bills offended the authorities in Britain. No Indian element was associated with the Legislative Councils.

In practice the Legislative Council threatened to alter the whole structure of the Indian Government. It had developed into "an Anglo-Indian House of Commons."

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### 23.9 GOVERNMENT OF INDIA ACT, 1858

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As the Charter Act of 1853 did not give the East India Company the right to govern India for another 20 years, it gave an opportunity to the Home Government to step in and take the place of the East India Company in India. This process was hastened by the happenings of 1857, or the so called 'Mutiny'.

Whigs and Tories had joined hands to complete without delay the process of extending crown government over India. Lord Palmerston, the British Prime Minister, declared his Government's decision to assume directly the Government of India by the British Crown. John Stuart Mill prepared a dignified and weighty petition which was presented by the Company against the Government decision to both the Houses of Parliament. But no petition could any longer stem the tide of mounting criticism against the Company's administration. Lord Stanley, President of the Board of Control introduced a bill for the 'Better Government' of India which became an Act of Parliament in August 1858.

The Government of India passed from the hands of the English East India Company to the crown. The armed forces of the company were transferred to the crown.

The Board of control and court of Directors were abolished. Their place was taken by the Secretary of State of India and his India Council. They were to govern India in the name of her majesty. The Secretary of State was to sit in Parliament. He was a cabinet minister of England and as such was responsible to Parliament. Ultimate power over India remained with Parliament.

The Act created an India council of fifteen members. It was to advise the Secretary of State who could overrule its decisions. Approval of the Council was essential in financial matters. Most of the members of the India Council were those who had retired from Indian services.

The Secretary of State was given the power of sending and receiving secret messages and despatches from the Governor General without the necessity of communicating them to the India Council. The Secretary of State was to present to the House of Commons periodically report on the moral and material progress of India.

The Government of India in its dealings with England was guided by the directions laid down by the Secretary of State in Council. All matters concerning legislation, land revenue, public works, railways, jobs, new expenditure and policies were rigidly scrutinised and controlled by the Secretary of State. The Rules and Regulations made in India by the secretary of state were to be laid on the table of the House of Commons.

The Governor General became known from now as the Viceroy or Crown's representative. In matters of policy and its execution the viceroy was increasingly reduced to a subordinate position in relation to the British Government. The Government of India was finally directly controlled from London.

#### Check Your Progress 3

- 1) To what extent was the revolt of 1857 responsible for the takeover of the Indian Government by the Crown? Write in five lines.

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- 2) What were the powers of the Secretary of State and the Viceroy under the Government of India Act of 1858?

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## 23.10 LET US SUM UP

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The need for constitutional change arose after the East India Company became the political power in 1757. The British Government was no longer willing to allow the Company's affairs to continue unsupervised. Pressure from merchants and manufacturers to end the monopoly of the Company mounted. Public opinion was critical of corruption in the Government in Bengal. Free enterprise became a popular slogan.

The Regulating Act of 1773 accordingly put a check on the powers of the Company. Its administration was subjected to supervision by the British Government. The setting up of the Supreme Court at Calcutta was the first step towards establishing a new structure of Government.

Pitt's India Act further strengthened the powers of the Government vis-a-vis the Company. In India authority was centralised in the person of the Governor-General who was answerable to the British Government through the Board of Control.

The Charter Act of 1813 ended the prized monopoly of the Company over trade with India. With this an era begun in 1600 ended. The Company's control over revenue, administration and appointments was untouched. Its monopoly of the China trade continued.

The Charter Act of 1833 ended the Company's monopoly of the China trade. The Act also declared that no Indian subject would face discrimination on the grounds of creed, descent, colour etc.

The Charter Act of 1853 was a holding measure. The Government of India Act of 1858 vested authority in the Secretary of State and the Viceroy. They became the twin pillars on which the structure of Government rested. The rule of the Crown was finally established in place of Company's rule.

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## 23.11 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress 1

- 1) See Section 23.2
- 2) Read Sections 23.3 and 23.4 before writing your answer.

### Check Your Progress 2

- 1) See Section 23.7
- 2) See Section 23.5

### Check Your Progress 3

- 1) See Section 23.9
- 2) See Section 23.9